

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-3096

Appeal MA13-412

Township of Adjala-Tosorontio

September 16, 2014

Summary: The appellant requested access to records relating to her neighbour's property. The township granted access to a large number of records, denying access to certain portions under the exemptions in sections 7(1) and 14(1). The appellant did not appeal the decision to deny access to certain portions of the records under the exemptions claimed, but maintained that additional records responsive to her request ought to exist. The appellant also disputed the manner in which the township defined the scope of the request. In this order, the adjudicator upholds the township's search for responsive records and its interpretation of the scope of the request, as clarified by the appellant. Accordingly, the appeal is dismissed.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17.

OVERVIEW:

[1] The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Township of Adjala-Tosorontio (the township) for access to the following:

I request the following information on:

Property Owner: [a named individual]

Address: [a specified address]

Tax Roll [a specified number]

...

I wish to examine as quickly as possible, All documentation, memos, emails, notes, letters, reports, permits and their attachments, etc. in the township files and to include all information on the removal of the hydro, water supply, heat and septic system from the original house located on the property.

[2] The township initially issued an interim decision dated July 12, 2013, advising that, based on an initial review of the responsive records, it will cost \$125 to process the request. In addition, the township advised that, because it does not have custody or control of records relating to the removal of hydro, it transferred that part of the request to another institution under the *Act*, the Electrical Safety Authority, pursuant to section 18 of the *Act*.

[3] In correspondence dated July 29, 2013, the township issued a decision granting the appellant partial access to the records. Access to some information was severed pursuant to the mandatory personal privacy exemption in section 14(1) and the discretionary advice or recommendations exemption in section 7(1) of the *Act*. The township advised that access to records relating to the removal of heat from the property cannot be provided as no such records such exist. The township enclosed an invoice for \$157.50 in relation to the time required to search, prepare and sever the records.

[4] In correspondence addressed to the appellant and dated August 15, 2013, the township indicated:

With respect to your verbal request to have all documents related to your line fence application, it is the Township's opinion that your verbal request is outside the scope of your original FOI request... and will require you to submit a new request under the *Municipal Freedom of Information & Protection of Privacy Act*.

[5] The appellant appealed the decision of the township to this office. At the outset of this appeal, the appellant advised this office that she is not appealing the township's decision respecting the quantum of the fee or the application of the exemptions claimed to the information severed pursuant to sections 7(1) and 14(1) of the *Act*. Rather, the

appellant confirmed with the mediator that her appeal relates to her concern that additional records should exist. Specifically, the appellant advised the mediator that she is seeking records relating to her application under the *Line Fences Act* and the surrounding documentation relating to the township's decision in relation to that application.

[6] In a letter dated October 8, 2013, the township wrote to the appellant advising that:

Further to a letter to you dated August 15, 2013, please be advised that it is the Township's opinion that your request for records in relation to your application under the *Line Fences Act* is outside the scope of your original request.

[7] The appellant advised the mediator that she believes the information which she is seeking is within the scope of her request. Further mediation was not possible and the appeal was moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. I sought and received representations from the appellant, a complete copy of which were shared with the township in accordance with Practice Direction 7 and section 7 of the IPC *Code of Procedure*. The township also submitted representations which were then shared with the appellant, who made further representations by way of reply.

[8] The appellant concedes in her reply submissions that certain records she is seeking are not located in the files which contain other responsive records. She continues to maintain that records confirming that approvals from Transport Canada were granted have yet to be produced. While drafting this order, I sought and received additional representations from the township regarding the records referred to by the appellant in her reply representations. The township reiterated that all of the documentation requested by the appellant, with the exception of the severed portions of the records, has been disclosed to her.

[9] As a result, the sole issue to be determined in this appeal is whether the township has met its obligations under the *Act* to conduct a reasonable search for all of the records that are responsive to the appellant's request, as framed and later clarified by her.

[10] In this order, I uphold the township's search as reasonable, given all of the circumstances surrounding the request and the history of contact between the parties to the appeal.

DISCUSSION:

Search for responsive records

[11] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17¹. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[12] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records². To be responsive, a record must be "reasonably related" to the request [Order PO-2554]. A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request³.

[13] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control [Order MO-2185].

[14] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist [Order MO-2246].

Representations of the parties

[15] In her initial representations, the appellant provided very specific submissions regarding the records which she maintains ought to exist in the township's record-holdings which are responsive to her request. Specifically, she is seeking access to an application under the *Line Fences Act* dated September 19, 2012 involving the subject property, as well as a letter dated September 25, 2012. In that letter, the township indicates that a lake which forms part of the appellant's property boundary is "within the jurisdiction of Transport Canada." The appellant states that she is seeking access to any records which assisted the township in making that determination.

[16] In its representations, the township states that during the mediation stage of the appeals process the appellant was granted access to her application under the *Line Fences Act* dated September 19, 2012. It goes on to add that, this disclosure was made despite the fact that it initially took the position that this information related

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Orders M-909, PO-2469, PO-2592.

exclusively to the appellant's property and was not, therefore, within the scope of the request. It noted that the request as originally framed sought access only to records relating to her neighbour's land.

[17] As part of its representations, the township provided an affidavit sworn by its Clerk in which she deposes as to the chronology of events relating to the request and subsequent appeal. In addition, she describes in great detail all of the efforts made to identify and locate the records responsive to the request. The Clerk requested that searches be conducted of six separate departments within the township's administration and has provided me with evidence of the results of each of the searches conducted within them. In total, the Clerk indicates that some 143 records were made available to the appellant for her review.

[18] In addition, the Clerk has responded to my inquiries respecting the existence of records confirming that certain approvals from Transport Canada were granted with respect to the property in question. The Clerk indicates that a further search of the file relating to the appellant's *Line Fences Act* application was conducted and that no records relating to Transport Canada approvals were identified.

[19] Based on the information contained in the representations of the township, the affidavit of the Clerk and the appellant's admissions made in her representations, I am satisfied that the township has conducted a reasonable search for all responsive records. Clearly, the appellant continues to believe that records relating to approvals from Transport Canada ought to exist in the township's record-holdings. I find, however, that the township has conducted a thorough and comprehensive search of the locations within its record-holdings where such records could reasonably be expected to be found. As such, I find that the township has met its obligations under the *Act* as the searches which it undertook for responsive records have been reasonable.

[20] I note that the township is not required to prove "with absolute certainty that further records do not exist" and conclude that it has satisfied its obligations under the *Act*, based on the evidence before me. As a result, I dismiss the appeal.

ORDER:

I dismiss the appeal.

Original Signed By: _____
Donald Hale
Adjudicator

September 16, 2014